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STATUS OF PREPARATION OF PUBLICATIONS, STUDIES AND DOCUMENTS FOR THE WORLD CONFERENCE

Note by the Secretariat

Addendum

Contribution from the International Committee of the Red Cross

The attention of the Preparatory Committee is drawn to the attached contribution submitted by the International Committee of the Red Cross (ICRC). This contribution comprises of two documents: the first (annex I), entitled "The ICRC and protection of human rights", examines the relationship between international humanitarian law and human rights and describes the ICRC's activities in this context; the second (annex II) consists of a list of documents related to the various objectives of the World Conference on Human Rights; these documents, which are available for consultation in the files of the secretariat of the World Conference, cover, in particular, the following subjects: (a) protection and assistance for victims of international or non-international armed conflicts and internal disturbances; (b) the relationship between international humanitarian law and human rights; and (c) implementation measures (International Fact-finding Commission).

Annex I

THE ICRC AND PROTECTION OF HUMAN RIGHTS

1. International humanitarian law which, by definition, is applicable in armed conflicts, is very much the complement of human rights. Both pursue the same aim, which is respect for human beings and their fundamental rights, such as the right to life; however, humanitarian law has its own specific character in that it relates to situations of international or non-international armed conflict and to their direct consequences.

2. There are few situations in which individuals face greater dangers than in wars. And it is also in war situations that individuals are the most vulnerable. The original idea of international humanitarian law, which was concerned in the emotions stirred up in Henry Dunant by the Solferino battlefield, was very simple, namely to confer a neutral character on relief and those giving relief to the wounded so as to enable such assistance to be provided under a single, universal and easily identifiable emblem. However, Henry Dunant understood - and this is what might be described as his masterstroke - that it was not enough merely to set up a relief organization for war victims but that such an organization needed to be assured from the outset of recognition and support from Governments; in other words, at one and the same time, he linked action with international legal backing. This idea gained ground and led to the adoption of the First Geneva Convention in 1864. After floating the idea of the Red Cross and contributing to the establishment of the National Societies which today exist in more than 150 countries all over the world, the ICRC wondered whether there was any justification for its continued existence.

3. In fact, it very quickly realized that it had a role to play not only in the development and universalization of humanitarian law but also as a neutral go-between in armed conflicts, enabling contact to be maintained between the combatants so as to settle humanitarian problems such as the exchange of correspondents between prisoners of war and their families. And it could also serve as an intermediary between victims, with their rights, and States, with their obligations towards those victims.

4. The mononational character of the ICRC and its independence and neutrality undoubtedly made it more acceptable for such a role than an intergovernmental organization or an organization from a politically committed country. Time was to show that this idea was correct, and today the ICRC is present in numerous theatres of war throughout the world.

5. The ICRC has about a thousand delegates, assisted by associates and 5,000 local employees, working on behalf of victims of some 30 armed conflicts. Thus, a private, mononational (Swiss) institution has been given a highly precise and tremendously important mandate by the international community to act as a neutral humanitarian intermediary in conflict situations. The Geneva Conventions and their two Additional Protocols of 1977 expressly recognize the ICRC's right to visit prisoner-of-war camps and civil internee camps in enemy or occupied territory. They also grant it a right of humanitarian initiative, which, subject to the consent of the States concerned, enables it to conduct any other activities in order to offer its

protection and assistance services for victims of such conflicts. It is in this area that the analogies between international law and human rights can be perceived most clearly. Certain common elements such as the principles of inviolability, non-discrimination and security of person derive from the convergence of the fundamental legal principle of the Geneva Conventions, which requires that persons placed hors de combat or taking no active part in hostilities shall be respected, protected and treated humanely, and the fundamental principle of human rights whereby an individual shall at all times be guaranteed the exercise of fundamental rights and freedoms, as well as living conditions conducive to the harmonious development of his personality.

6. Therefore, whenever the ICRC has concerned itself with the development, dissemination or observance of international humanitarian law, it has also, albeit indirectly, concerned itself with respect for certain fundamental human rights. Simply, in so doing, it has concentrated on and limited its attention to the situation of the individual exposed to real or potential arbitrariness by the enemy - an enemy who is sometimes of the same nationality as the person who is in his hands, not only in cases of civil war but also in situations of internal disturbances or tensions.

7. These situations, which are not covered by international humanitarian law, are generally characterized by the imprisonment of certain types of persons by the authorities. A common feature of these situations is that the authorities consider the acts, words or writings of these individuals to involve such opposition to the existing political system as to require punishment through deprivation of liberty. With the agreement and encouragement of the international community, the ICRC performs the humanitarian mission of providing protection and assistance to these detainees, who are commonly referred to as political or "security" prisoners.

8. The first visits to political prisoners took place in Russia in 1918. Only from 1960 on, however, did the ICRC work systematically in such situations. To illustrate the scale of this ICRC activity, it may be noted that more than half a million "political prisoners" have been visited in almost 100 countries since the end of the First World War.

9. In 1991, for example, the ICRC had access to 153,759 prisoners (including prisoners of war) in 1,927 places of detention. While it does not comment on the reasons for the detention of these persons, the ICRC does concern itself with their conditions of imprisonment by taking concrete action consisting of thorough, periodic visits by its delegates to places of detention and prisoners, with whom they must be able to talk freely and without witnesses, followed by discussions at all levels with prison officials and culminating in confidential reports addressed solely to the detaining authority. These reports, which give a detailed and objective description of detention conditions and contain specific suggestions for improving them, where appropriate, are not intended for publication.

10. Thus, contrary to the bodies with which you are familiar, the ICRC has made a definitive choice to work with discretion and confidentiality in order to be close to the victim and to protect him, but not to condemn. With this aim, it has opted for ongoing dialogue with Governments and parties to conflicts. And, as you are well aware, this dialogue rests on the credibility

which the ICRC enjoys with these Governments, a credibility which has been built up gradually over the years. There is no doubt that, through this activity, the ICRC is also actively contributing to respect for human rights, and particularly to the struggle against torture in prison. It does not, however, base its actions on the Universal Declaration but only on the Statutes of the International Red Cross and on its universally recognized right of humanitarian initiative.

11. Although international humanitarian law has developed on a considerable scale (as of 1 January 1993, there were 117 States parties to the four Geneva Conventions of 1949, 121 States parties to Additional Protocol I of 1977, and 112 States parties to Additional Protocol II of 1977), it must once again be emphasized that the degree of respect for humanitarian standards by parties to international or internal conflicts is far from satisfactory. It is not easy to convince the warring States to preserve this fragile balance between the demands of humanity and those of their military interests. An overriding priority today is to ensure greater respect by States for their international humanitarian commitments. Thus, Protocol I of 1977 additional to the provisions of the Geneva Conventions reaffirms the right of victims to assistance, stipulating in particular that impartial relief efforts will not be regarded either as interference in an armed conflict or as hostile acts, even if such assistance is intended for the civilian population of the opposing party. It can thus be seen that these provisions entirely dispel any notion of interference.

12. The tragedies currently being experienced by the civilian populations in the conflicts in Southern Sudan, Somalia, Liberia, Mozambique, Kurdistan, Afghanistan, Bosnia, Croatia, and the Armenian and Azeri regions in the Caucasus; the continuing detention after more than 10 years of prisoners of war in Iran and Iraq or in Western Sahara and the persistent clashes in Southern Lebanon and in the Israeli-occupied Arab territories are all situations which immediately reveal the disparity between the conduct of belligerents and respect for their humanitarian obligations. At the moment, war is virtually omnipresent, with cities being subjected to indiscriminate bombing and populations exposed to the worst exactions and reprisals. Entire civilian populations are ensnared in wars and threatened by famine, their right to assistance flouted by the refusal of belligerents to allow the ICRC or other humanitarian organizations to bring in relief.

13. In all these situations, respect for the existing humanitarian rules would have saved thousands of lives and prevented entire civilian populations from being forced into exile in search of the assistance and protection which they need.

14. It is no longer tolerable that, in all these conflicts whose consequences transcend frontiers, the lot of the victims remains dependent on the goodwill of the parties concerned. We must impress more firmly on the belligerents that they are accountable and responsible for their acts to the international community. In this connection, common article 1 of the Geneva Conventions is quite unambiguous, since the Contracting Parties undertake "to respect and to ensure respect for the present Convention in all circumstances". This is a clear legal obligation that primarily entails the individual responsibility of the warring States but is also set in a broader framework in which each State

is required to ensure respect for this legal instrument. For this reason, when a State at war violates the commitment which it assumed by acceding to the Conventions, all the other States also become responsible if they fail to act to put an end to that violation.

15. How can this erosion of humanitarian law which we are witnessing be checked and gradually reversed? The first step is to promote an understanding that, in the perspective of the year 2000, the solution of the major problems with which mankind is confronted is inseparable from respect from the humanitarian values underpinning humanitarian action. Whether the purpose is to protect human life or to alleviate suffering, to combat hunger and disease or to promote détente and cooperation, no lasting progress can be achieved unless we demonstrate by our actions that we believe in the dignity of all human beings. However, it is not enough merely to understand, we must also act - act to ensure that international humanitarian law is universally respected. In conflicts such as those in Bosnia and Herzegovina or in Somalia, how many men, women and children can today expect to receive the protection and assistance to which they are entitled? How many people are appealing to us from the depths of their distress and solitude? How many lives have been sacrificed or imperished? Tens or hundreds of thousands. How, then, can belligerent States be made to show greater respect for the commitments assumed?

16. The main way is by improving knowledge of the humanitarian rules among the political leaders, armed forces and general public of States parties. The dissemination of humanitarian law, which forms part of the measures which the State must take at the national level to implement this law, is one of the best means of preventing violations of humanitarian rules and fundamental human rights. The ICRC puts a good deal of energy into the dissemination programmes that it carries out in cooperation with Red Cross and Red Crescent Societies and legal institutes throughout the world. It should be emphasized that the teaching of international humanitarian law is a vital challenge, as is the promotion and dissemination of the main systems of human rights protection.

17. However, improved respect for humanitarian commitments means reiterating the shared responsibility of the international community, as provided for in common article 1 of the four Geneva Conventions. Accordingly, States must also be ready to exert pressure on other Governments to ensure respect for the Conventions, even beyond their own frontiers. This is truly a common responsibility of the international community as a whole.

18. There are some who envisage other methods outside the legal framework of existing humanitarian law: thus, there is a good deal of talk about the right of interference, which is seen as a means of manifesting active solidarity. While generously meant, this proposal comes more into the politico-military sphere than into the humanitarian field, since it also encapsulates the notion of the possible use of force. And if there is one thing that humanitarian action should avoid, it is precisely becoming captive to the political stakes attaching to conflicts. Similarly, humanitarian action cannot be accommodated

with the use of force, for this would inevitably mean losing the impartiality which it must preserve in order to act on behalf of all victims without discrimination, and its corollary, a necessary independence vis-à-vis the belligerents.

19. The fact is that we have a duty of solidarity - the solidarity which inspired Henry Dunant to improvise relief to the wounded of Solferino. It is that solidarity which he elevated to a legal norm and which, today, for the States parties to the Geneva Conventions, must quite simply become a moral duty that, for the sake of the victims of so many conflicts, they no longer have the right to evade. It is this duty that the International Committee of the Red Cross, the guardian of the Geneva Conventions, urges States to perform.

Annex II

List of ICRC documents related to the various objectives of the World Conference*

Dietrich Schindler, "The International Committee of the Red Cross and Human Rights", International Review of the Red Cross, January-February 1979, 14p.

Jacques Moreillon, "The Fundamental Principles of the Red Cross, Peace and Human Rights", International Review of the Red Cross, July-August 1980, 16p.

"ICRC Protection and Assistance Activities in Situations Not Covered by International Humanitarian Law", International Review of the Red Cross, July-August 1988, 38p.

"Action by the International Committee of the Red Cross in the Event of Breaches of International Humanitarian Law", International Review of the Red Cross, March-April 1981, 8p.

Sandra Singer, "The Protection of Children during Armed Conflict Situations", International Review of the Red Cross, May-June 1986, 40p.

Marco Sassoli, "The National Information Bureau in Aid of the Victims of Armed Conflicts", International Review of the Red Cross, January-February 1987, 24p.

Françoise Krill, "ICRC Action in Aid of Refugees", International Review of the Red Cross, July-August 1988, 24p.

"Declaration on the Rules of International Humanitarian Law Governing the Conduct of Hostilities in Non-International Armed Conflicts", International Review of the Red Cross, September-October 1990, 6p.

Maria Teresa Dutli, "Captured Child Combatants", International Review of the Red Cross, September-October 1990, 16p.

Fréderic Maurice et Jean de Courten, "ICRC Activities for Refugees and Displaced Civilians", International Review of the Red Cross, January-February 1991, 15p.

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* These documents are available for consultation in the files of the secretariat of the World Conference. They may also be obtained from the ICRC in Geneva.

J. Ashley Roach, "The International Fact-Finding Commission - Article 90 of Protocol I additional to the 1949 Geneva Conventions II, International Review of the Red Cross, No. 788, March-April 1991, p. 167-189.

Françoise Krill, "The International Fact-Finding Commission - The role of the ICRC", International Review of the Red Cross, No. 788, March-April 1991, p. 190-207.

"Visit by the International Committee of the Red Cross to Persons Deprived of Their Freedom", ICRC, Division for Detention, September 1992.